

**Supplemental Specification  
2005 Standard Specification Book**

**SECTION 00515**

**CONTRACT AWARD AND EXECUTION**

**Delete Section 00515 in its entirety and replace with the following:**

**PART 1      GENERAL**

**1.1      RELATED SECTIONS**

- A.      Section 00570: Definitions

**1.2      REFERENCES**

- A.      United States Department of Treasury Circular

**1.3      CONSIDERATION OF PROPOSALS**

- A.      The Department publicly opens properly executed proposals using the current version of the EBS to compare bids on the basis of the summation of the products of the quantities and the unit bid prices.
  - 1.      The Department makes the results of the comparisons available to the public.
  - 2.      The unit bid prices govern if a discrepancy exists between unit bid prices and extensions.
- B.      The Department reserves the right to reject any or all proposals, waive technicalities, or advertise for new proposals.
- C.      The bidder can request withdrawal of a bid after bid opening by:
  - 1.      Submitting to the Director for Construction and Materials a notarized affidavit within 24 hours after bid opening declaring a clerical or mathematical error in bid preparation.
  - 2.      Submitting accompanying declaration with original work sheets used in bid preparation.
  - 3.      Describing specific errors in detail.
  - 4.      Verifying that error has a significant monetary effect in the amount of 3 percent of the bid or greater.

- D. The bidder may not request bid withdrawal for judgmental errors.

#### **1.4 AWARDING THE CONTRACT**

- A. The Department awards the contract to the lowest responsible bidder within 30 calendar days.
- B. The Department may withhold award beyond the 30 calendar days with the approval of the successful bidder.
- C. If the award is not made within 30 calendar days, the bidder may withdraw the proposal without liability.
- D. The Department notifies the successful bidder by letter mailed to the address shown on the proposal that the bid has been accepted and the contract has been awarded.

#### **1.5 CANCELING THE AWARD**

- A. The Department reserves the right to cancel the award of any contract before execution without liability.

#### **1.6 RETURNING PROPOSAL GUARANTY**

- A. Proposal guaranties are returned after satisfactory contract bonds and all insurances have been furnished and the contract has been executed.
- B. A bidder is not released from the bidding obligation because of an alleged error in the preparation of the proposal unless the Department returns the proposal guaranty.

#### **1.7 CONTRACT BONDS**

- A. The Department furnishes required contract bond forms.
- B. Return executed forms to the Department as required by the Utah Procurement Code.
  - 1. **Payment Bond** secures the payment of the claims of laborers, mechanics or materialmen employed on the work under the contract.
  - 2. **Performance Bond** guarantees the faithful performance of the contract.
- C. Each bond must equal 100 percent of the contract price.

- D. Underwriting Limitation is stated in the United States Department of Treasury Circular 570; Surety Companies Acceptable on Federal Bonds. Only companies listed in the Department of Treasury Circular 570 are acceptable.
- E. The Department may make alterations, extensions of time, extra and additional work, and other changes authorized by the contract without securing the consent of the surety or sureties on the contract bonds.
- F. If a Contractor's surety is unable to provide payment, the Department cancels all work on the contract, unless the Department determines it is in the public interest to continue the work.
- G. As an alternate contract bond, furnish a cash bond of two cashier's checks, each in the amount of Contractor's bid amount.
  - 1. The Department holds the cash bond and uses it when needed for correction of any non-performance or non-payment.
  - 2. Upon release by the Engineer for satisfactory completion of the work, the Department returns to the Contractor one half of the cash bond minus any cost against the bond.
  - 3. If no payment claims have arisen within 90 calendar days after release by the Engineer, the Department releases the remaining cash bond.
  - 4. The Department holds the cash bond until the non-performance and non-payment issues are resolved. Contractor accrues no liability during this time.
  - 5. The Department decides the need for withholding the cash bond.

## **1.8 EXECUTING AND APPROVING THE CONTRACT**

- A. Return the signed contract, properly executed contract bonds, and all required insurances to the Department within 15 calendar days after notice of award.
  - 1. The bidder can withdraw the proposal without penalty if the Department does not execute the contract within 30 calendar days after receiving signed contracts and bonds and insurances.
  - 2. The contract is not considered in effect until executed by all parties.

## **1.9 MATERIALS GUARANTY**

- A. The successful bidder must:
  - 1. Furnish a complete statement of the origin, composition, and manufacturer of material proposed for use in the construction.
  - 2. Furnish samples to be tested and inspected for meeting the contract.

- B. Contractor may be required to furnish a written guaranty covering certain items of work for varying periods of time from the date of acceptance of the contract.
  - 1. The Department specifies in the contract the work to be guaranteed, the form, and the time limit of the guaranty.
  - 2. Sign and deliver the guaranty to the Engineer before acceptance of the contract in accordance with Section 00570.
  - 3. Upon completion of the contract, the required performance bond may be reduced to conform to the total amount of the contract bid prices for the items of work to be guaranteed. This amount continues in full force and effect for the duration of the guaranty period. Refer to this Section, article 1.7.

#### **1.10 FAILURE TO EXECUTE CONTRACT**

- A. The Department can cancel the notice of award and keep the proposal guaranty if the successful bidder does not execute the contract and file acceptable bonds and insurance certificates evidencing coverage within 15 calendar days after the date of the Notice of Award.
- B. The Department may then award the contract to the next lowest responsible bidder, or may re-advertise the work.

#### **1.11 ESCROW OF BID DOCUMENTATION**

- A. If specified, submit with the proposal a legible copy of the bid documentation, as defined in Section 00570. Meet the following:
  - 1. Submitting and Returning Bid Documentation
    - a. Submit bid documentation in a sealed container clearly marked "Bid Document" and labeled with the bidder's name and address, submission date, and project number.
    - b. Bid documentation is returned to all but the successful bidder after the contract has been executed.
  - 2. Affidavit
    - a. In addition to bid documentation, submit a signed and certified affidavit that lists each bid document submitted by author, date, nature and subject. The affidavit must attest that:
      - 1) The affiant has examined the bid documentation and that the affidavit lists all documents used to prepare the bid.
      - 2) The sealed container contains all such bid documentation

3. Duration and Use
  - a. After executing the contract, the Department and the Contractor must jointly deliver the sealed container and affidavit to a bank or other Department-designated bonded document depository for safekeeping in a safety deposit box, vault, or other secure accommodation.
  - b. The document storage agreement must indicate that the bid documentation and affidavit will remain in escrow during the life of the contract or until the Contractor notifies the Department of its intent to file a claim or initiate contract-related litigation against the Department. Such action is sufficient ground for the Department to obtain the release and custody of the escrowed bid documentation.
  - c. Absent a claim or notice of the Contractor's intent to file a claim, the Department will direct the depository to release the sealed container to the Contractor provided the Contractor signs the final standard release form.
  - d. Certifying that the materials in escrow represent all documentation used to prepare the bid waives the Contractor's rights to use bid documentation other than those in escrow, should contract disputes arise.
4. Refusal or Failure to Provide Bid Documentation
  - a. Failure to provide bid documentation renders the bid nonresponsive.
5. Confidentiality
  - a. Materials held in escrow remain the property of the Contractor unless the Department receives the Contractor's notification of intent to file a claim or litigation ensues. If either occurs, the materials become the property of the Department until the claim is resolved or litigation is concluded.
  - b. Originals and copies of escrow materials will be returned to the Contractor once litigation is concluded, outstanding claims are resolved, or final release is executed.
  - c. The Department will make every reasonable effort to ensure the confidentiality of bid documentation to the extent allowed by the Governmental Records Access and Management Act, Title 63, Title 2, Utah Code Annotated.
6. Cost and Escrow Instruction
  - a. The Department will pay to store all escrowed materials and will provide escrow instructions to the depository.
7. Payment
  - a. Include within the overall contract bid price all costs to comply with this article.

**PART 2      PRODUCTS      Not used**

**PART 3      EXECUTION      Not used**

END OF SECTION